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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 RCB INTERNATIONAL, LTD.,

9 Plaintiff,

10 v.

11 LABBEEMINT, INC.,

12 Defendant.
13

NO. 1:16-cv-03109-SAB

**ORDER GRANTING
PLAINTIFF'S RENEWED
MOTION FOR SUMMARY
JUDGMENT**

14 Before the Court is RCB International, Ltd.'s ("RCB") Renewed Motion for
15 Summary Judgment on Defendant's First Counterclaim, ECF No. 128. The motion
16 was heard without oral argument. For the reasons stated herein, RCB's motion is
17 granted.

18 Labbeemint, Inc. ("Labbeemint") states counterclaims against RCB for
19 violations of the Washington Consumer Protection Act ("CPA"), Wash. Rev. Code
20 § 19.86.010, *et seq.*, in its efforts to restrain trade of the Erospicata mint plant
21 through the enforcement of restrictive contractual provisions with growers,
22 propagators, and/or research institutions. Labbeemint contends that these actions
23 constitute unlawful monopolization and are an unfair practice. RCB moves for
24 summary judgment against Labbeemint's counterclaims.

25 Summary judgment is appropriate if the pleadings, discovery, and affidavits
26 demonstrate there is no genuine issue of material fact *and* that the moving party is
27 entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317,
28 323 (1986) (citing Fed. R. Civ. P. 56(c)). There is no genuine issue for trial unless

**ORDER GRANTING PLAINTIFF'S RENEWED MOTION FOR
SUMMARY JUDGMENT + 1**

1 there is sufficient evidence favoring the nonmoving party for a jury to return a
2 verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
3 (1986). The moving party has the burden of showing the absence of a genuine
4 issue of fact for trial. *Celotex*, 477 U.S. at 325; *see also Fair Hous. Council of*
5 *Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001).

6 The material facts have not substantially altered since the Court denied the
7 parties' cross-motions for summary judgment and are not in dispute. *See* ECF No.
8 112 (statement of undisputed facts). There is no legal authority supporting
9 Labbeemint's argument that restrictive contracts used by RCB violate the CPA.
10 Rather, Labbeemint's argument is akin to that presented in its plant patent
11 preemption claim that was already rejected by the Court. This case is not about
12 plant patents, the expiration of plant patents, or whether RCB is required to give
13 the public at large access to its private property after the plant patent expired. The
14 principal issue in this case is whether Labbeemint has lawful possession of the
15 Erospicata mint plant, or more accurately, whether RCB can prove by a
16 preponderance of the evidence that Labbeemint's possession is not lawful.
17 Because there are no genuine issues of material fact and RCB is entitled to
18 judgment as a matter of law, RCB's motion is granted.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. RCB's Renewed Motion for Summary Judgment on Defendant's First
3 Counterclaim, ECF No. 128, is **GRANTED**.

4 2. Any remaining pending motions shall be heard at the pre-trial
5 conference.

6 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
7 file this Order and provide copies to counsel.

8 **DATED** this 1st day of November 2017.

A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian
United States District Judge